

APPEAL NO. 010608

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 13, 2001. The hearing officer resolved the disputed issues by determining that the appellant (claimant) did not sustain a compensable injury in the form of a heart attack on _____, and so had no resulting disability. The hearing officer also resolved that the respondent (carrier) did not waive its right to contest compensability of the injury. The claimant appeals and requests reversal on the grounds of factual sufficiency. The carrier responds and urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury in the form of a heart attack on _____, and therefore had no ensuing disability. The evidence on the record, including the operative report showing that the claimant had a coronary artery which had 99% stenosis, or "blockage," supports the hearing officer's finding that the claimant's heart attack was due to the greater contributing factor of the natural progression of the claimant's preexisting heart condition or disease, not because of a specific event occurring in course and scope of the claimant's employment. See Section 408.008.

If the claimant suffered no compensable injury, he had no disability, since disability must be based upon a compensable injury. Section 401.011(16). For that reason, the hearing officer did not err in determining that the claimant had no disability.

In addition, the hearing officer did not err in determining that the carrier did not waive its right to contest the compensability of the injury. While the claimant asserts that the carrier waived its right to contest compensability pursuant to the standard in Downs v. Continental Casualty Co., 32 S.W.3d 260 (Tex. App.-San Antonio 2000, pet. pending), we do not see evidence here creating a Downs issue. In Downs, the Fourth Court of Appeals issued a decision on rehearing, again determining that a carrier waives the right to contest compensability if it fails to either agree to begin payment of benefits or to provide written notice of its refusal to pay within seven days after it receives notice of an injury. Evidence on the record supports the hearing officer's conclusion, including the employer's affidavit, stating that she reported the claimant's injury to the carrier via facsimile September 29, 2000, and the carrier's first Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21), showing that the carrier began paying benefits to the claimant October 5, 2000 (the seventh day after the carrier received notice of the claim), with a benefit accrual date of September 26, 2000. There is also evidence the carrier disputed compensability within 60 days.

The parties introduced conflicting evidence on the disputed issues. Pursuant to Section 410.165(a), the hearing officer is the sole judge of the weight and credibility of the evidence. The hearing officer resolves the conflicts and inconsistencies in the evidence and determines what facts have been established from the conflicting evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). This tribunal will not disrupt the contested findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not find them so here.

For these reasons, we affirm the hearing officer's decision and order.

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge